



# NORTH CAROLINA GENERAL ASSEMBLY

Session 2021

## Legislative Incarceration Fiscal Note

**Short Title:** Req Active Time Felony Death MV/Boat.  
**Bill Number:** House Bill 151 (First Edition)  
**Sponsor(s):** Representatives Pittman, C. Smith, Hanig, and Kidwell

### SUMMARY TABLE

FISCAL IMPACT OF H.B. 151, V.1 (\$ in thousands)															
	FY 2021-22		FY 2022-23		FY 2023-24		FY 2024-25		FY 2025-26						
<b>State Impact</b>															
General Fund Revenue	-	to	-	-	to	-	-	to	-	-	to	-	-	to	-
Less Expenditures	-	to	-	23.2	to	38.7	23.2	to	46.4	23.2	to	46.4	23.2	to	46.4
<b>General Fund Impact</b>	-	to	-	(23.2)	to	(38.7)	(23.2)	to	(46.4)	(23.2)	to	(46.4)	(23.2)	to	(46.4)
<b>NET STATE IMPACT</b>	-	to	-	(\$23.2)	to	(\$38.7)	(\$23.2)	to	(\$46.4)	(\$23.2)	to	(\$46.4)	(\$23.2)	to	(\$46.4)

### FISCAL IMPACT SUMMARY

Sections 1 and 2 of this bill would require that an intermediate punishment include special probation with a continuous period of confinement equal to one-fourth of the maximum sentence imposed, up to 27 months, for two offenses: felony death by motor vehicle and death by impaired boating, both of which are Class D felonies. Fiscal Research finds that this change would have a fiscal impact because intermediate punishments for these offenses would include lengthier periods of confinement than required under current law. Assuming that FY 2019-20 conviction data for felony death by motor vehicle would continue at the same level, the bill would have an impact on the prison system ranging from \$0 to \$46,440 annually over the next five years. Fiscal Research is unable to estimate the impact of this change on the death by impaired boating charge due to a lack of data on the number of charges for that offense. However, its impact would likely match that of felony death by motor vehicle, scaled for the number of charges in a given year and the sentences imposed.

#### General

Because this bill does not create or modify any existing criminal charges, there is no anticipated impact to the court system, either the Administrative Office of the Courts or the Office of Indigent Defense Services. However, the bill may have an impact on the Department of Public Safety.

The Sentencing and Policy Advisory Commission (SPAC) prepares prison population projections for each bill containing a criminal penalty. SPAC assumes that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime rates. Likewise, FRD assumes no deterrent effects for any modifications to criminal penalties. The estimates in this Incarceration Note make no assumptions about the larger impact on crime rates or costs to society or the State.

**Department of Public Safety – Prisons**

Under current law, G.S. 20-141.4(b)(2) and G.S. 75A-10.3(f)(3) establish a Class D felony offense for felony death by vehicle and death by impaired boating, respectively. While most Class D felony convictions require an active sentence, an intermediate punishment is authorized if the offender is in Prior Record Level I for these offenses. This bill would require that the intermediate punishment include special probation with a continuous period of confinement of one-fourth of the maximum sentence imposed, up to 27 months. Section 1 of the bill applies this change to felony death by vehicle and Section 2 applies this change to death by impaired boating.

**Section 1: Felony Death by Vehicle**

Data provided by SPAC shows that in FY 2019-20, there were 19 convictions for felony death by vehicle under G.S. 20-141.4(b)(2). Of those, 14 were in Prior Record Level I. Of the 14 convictions in Prior Record Level I, 5 received an intermediate punishment and the remaining 9 received an active punishment. Offenders receiving an intermediate punishment had a higher average maximum sentence imposed than those receiving an active sentence (79 months and 77 months respectively). Of the 5 felony death by vehicle offenders sentenced in Prior Record Level I to intermediate punishment, 4 received special probation with an average length of 13 months. Assuming that this data remains true for future years, SPAC provided estimates of the impact to the prison system based on two scenarios – the new amount of required active time based on the average maximum sentence imposed (21 months, or 25% times 84 months) and the new amount of required active time based on the maximum allowable sentence (27 months, or 25% times 107 months). Because the bill would require special probation for all intermediate punishments, all 5 offenders would be required to serve this period of confinement.

Based on the most recent population projections and estimated bed capacity, the Prisons division will have surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional prison beds will be required from the changes in this bill.

SPAC provided the estimated impact of changing the allowable special probation sentence length for the 5 offenders sentenced under G.S. 20-141.4(b)(2) in Prior Record Level I with an intermediate punishment. Scenarios are provided for a special probation length of 20 months (one-fourth of the average maximum sentence imposed) or 27 months (the maximum allowable under the proposed sentencing change). The current average special probation length (13 months) was used as the baseline for estimating impact. The estimate does not include any changes in judicial or prosecutorial practices with the imposition of special probation for this offense.

<b>Estimated Prison Bed Impact Using One-Fourth of the Average Maximum Sentence Imposed and the Maximum Allowable Sentence Class D Felony</b>					
<b>Special Probation Sentence Length Scenario</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
20 Months	0	3	3	3	3
27 Months	0	5	6	6	6

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system based on FY 2019-20 expenditures is \$21.22 per day, \$645 per month, or \$7,740 per year, which includes the cost of food, clothing, and health care. If the previous conviction rate for felony death by vehicle holds, this bill will result in increased costs of \$7,740/year times the increased bed requirements listed in the table below:

	<b>FY 2021-22</b>	<b>FY 2022-23</b>	<b>FY 2023-24</b>	<b>FY 2024-25</b>	<b>FY 2025-26</b>
<b>21 Month Scenario</b>	<b>\$0</b> (\$7,740 x 0 beds)	<b>\$23,220</b> (\$7,740 x 3 beds)			
<b>27 Month Scenario</b>	<b>\$0</b> (\$7,740 x 0 beds)	<b>\$38,700</b> (\$7,740 x 5 beds)	<b>\$46,440</b> (\$7,740 x 6 beds)	<b>\$46,440</b> (\$7,740 x 6 beds)	<b>\$46,440</b> (\$7,740 x 6 beds)

**Section 2: Death by Impaired Boating**

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for death by impaired boating, which offers some indication that this offense is infrequently charged and/or infrequently results in convictions. However, it is not known how many convictions may occur and may be affected by the proposed change in this bill. As a result, Fiscal Research cannot provide an estimate for the impact of this section of the bill. However, much as in Section 1, it is likely than any future convictions for death by impaired boating will have an impact on the prison system. For every 5 of these convictions, the impact on the prison system should match the costs associated with Section 1 of this bill, as described above.

**TECHNICAL CONSIDERATIONS**

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N/A.

**DATA SOURCES**

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Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

**LEGISLATIVE FISCAL NOTE – PURPOSE AND LIMITATIONS**

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This document is an official fiscal analysis prepared pursuant to Chapter 120 of the General Statutes and rules adopted by the Senate and House of Representatives. The estimates in this analysis are based on the data, assumptions, and methodology described in the Fiscal Analysis section of this document. This document only addresses sections of the bill that have projected direct fiscal impacts on State or local governments and does not address sections that have no projected fiscal impacts.

**CONTACT INFORMATION**

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Questions on this analysis should be directed to the Fiscal Research Division at (919) 733-4910.

**ESTIMATE PREPARED BY**

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**Signed copy located in the NCGA Principal Clerk's Offices**